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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,371	04/04/2001	Jason P. McDevitt	KCX-250 (15306)	2875

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EXAMINER	
HAMILTON, LALITA M	

ART UNIT	PAPER NUMBER
3624	

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/826,371	MCDEVITT ET AL.	
	Examiner	Art Unit	
	Lalita M Hamilton	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 February 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *12* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Summary

On October 2, 2002, an Office Action was sent to the Applicant rejecting claims 1-38. On February 10, 2003, the Applicant responded by amending claims 1, 5-10, 24-25, 33, and 35.

Information Disclosure Statement

The Applicant has provided copies of the references cited in the previous IDS statement, and a signed copy is attached.

Drawings

In response to the Applicant' s amendment, the rejection set forth in the previous Office Action, paper no.8, has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, and 24-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Blott (5,474,257).

Blott discloses a tubular bandage comprising a base web having a nonwoven web of fibrous material (col.2, lines 34-40 and col.3, lines 10-15), open distal and proximal ends (fig.1-2), an elastic component providing form-fitting properties (col.2, lines 60-61 and col.3, lines 10-19), the nonwoven web forming at least a portion of the

interior of the sleeve (col.3, lines 20-23), the sleeve being tapered for a better (col.4, lines 45-50), the nonwoven web being composed of meltblown fibers (col.2, lines 53-55), the elastic component comprising an elastomeric material where the nonwoven web is attached to the elastic component in a manner that would allow the elastomeric material to be stretched and contracted (col.3, lines 10-24 and 53-60), the nonwoven web comprising a thermoplastic polymer (col.2, line s48-57), the elastic component containing a fibrous material (col.3, lines 53-62), and the elastic nonwoven comprising a laminate including a non-elastic nonwoven web laminated to the elastic component

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blott in view of Abuto (5,804,021).

Blott discloses the invention substantially as claimed; however, Blott does not disclose pulp fibers. Abuto teaches a fibrous nonwoven laminate for use in bandages comprising pulp fibers (col.1, lines 20-27; col.2, lines 5-8; and col.6, line 40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute pulp fibers as taught by Abuto into the device disclosed by Blott as an alternative choice of material for elastic component.

Claims 9-12, 28-29, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blott.

Blott discloses the invention substantially as claimed. Blott further discloses that the elastomeric material may be in the form of a strip (col.3, lines 53-55), which the Examiner is interpreting as also being a film, what the Examiner is interpreting as being stretch bonded (col.4, line 65 to col.5, line 12 and neck-bonded (col.5, lines 20-28) laminates, and that the tubular bandage may conform to a body portion (col.2, lines 15-22), which the Examiner is interpreting as including a finger or toe. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a film as an alternative form for the elastomeric material, stretch- and neck-bonded laminates as alternative choices of material, and a tubular bandage conforming to a finger or toe as alternative parts of the body that may be treated.

Blott does not disclose an elastic component comprising foam; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate an elastic component comprising foam, since it has been held to be within the general skill of a worker in the art to select known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 13-19 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blott in view of Tassie (2,882,528).

Blott discloses the invention substantially as claimed; however, Blott does not disclose a moisture barrier on a portion of the base web that is substantially

impermeable to liquids, vapor permeable, plastic, a microporous, or a multilaminate. Tassie teaches a tubular finger bandage comprising a moisture barrier on a portion of the base web that is substantially impermeable to liquids (fig.1: 12 and col.2, lines 1-17) and plastic. Tassie discloses several types of moisture barriers, which the Examiner is interpreting as also including vapor permeable, microporous, and multilaminate films. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a moisture barrier on a portion of the base web that is substantially impermeable to liquids, vapor permeable, plastic, a microporous, and a multilaminate as taught by Tassie into the device disclosed by Blott to prevent liquids from contacting the area being treated.

Claims 20-21 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blott in view of Tanihara (5,77,229).

Blott discloses the invention substantially as claimed; however, Blott does not disclose additives or chitosan. Tanihara teaches a bandage comprising additives (col.10, lines 43-65) and chitosan (col.7, lines 20-22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate additives and chitosan as taught by Tanihara into the bandage disclosed by Blott to provide means of deterring infection in the area being treated.

Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blott and Tanihara as applied claim 20 above, and in further in view of Satoh (5,120,758).

Blott discloses and Tanihara teaches the invention substantially as claimed; however, neither reference discloses nor teaches a cyclooxygenase inhibitor. Satoh teaches a formulation for application to the skin comprising cyclooxygenase (col.13, lines 13-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a cyclooxygenase inhibitor as taught by Satoh into the device disclosed by Blott and taught by Tanihara to provide an alternative material for deterring infection.

Claims 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blott in view of Wheeler (2,925,605).

Blott discloses the invention substantially as claimed; however, Blott does not disclose a sleeve member having a bandage having first and second panels attached with the panels forming seams that extend along a length of the sleeve. Wheeler teaches a finger bandage comprising a sleeve member having a bandage having first and second panels attached with the panels forming seams that extend along a length of the sleeve (fig.1: 23) and (col.2, lines 30-33). It would have been obvious to one having ordinary skill in the rat at the time the invention was made to substitute the sleeve member having a bandage having first and second panels attached with the panels forming seams that extend along a length of the sleeve as taught by Wheeler into the device disclosed by Blott as an alternative means of attached the panels to one another.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blott and Wheeler as applied to claim 33 above, and in further view of Tanihara.

Blott discloses and Wheeler teaches the invention substantially as claimed; however, neither reference discloses nor teaches additives. Tanihara teaches a bandage comprising additives (col.10, lines 43-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate additives as taught by Tanihara into the bandage disclosed by Blott and taught by Wheeler to provide means of deterring infection in the area being treated.

Response to Arguments

Applicant's arguments filed February 10, 2003 have been fully considered but they are not persuasive. Due to the amendment, the Zook reference has been withdrawn, and all arguments pertaining thereto and now moot.

The Abuto reference remains as a teaching that the use of pulp fibers is well known in the art. The Satoh reference remains as a teaching of cyclooxygenase-2 inhibitor, and the Tanihara reference remains as a teaching of additives and chitosan.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M Hamilton whose telephone number is (703) 306-5715. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-6101 for regular communications and (703) 746-6101 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-2272.

LMH

May 5, 2003

VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
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